

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

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) MDL No.: 1:13-md-2419-FDS  
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This Document Relates to:  
All Cases

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**PARTIAL OPPOSITION BY AFFILIATED DEFENDANTS TO PLAINTIFFS’  
STEERING COMMITTEE’S PROPOSED CASE MANAGEMENT ORDER**

The Affiliated Defendants in the New England Compounding Pharmacy, Inc. (“NECC”) Products Liability Litigation MDL No. 2419 respectfully submit this limited opposition in response to the Proposed Case Management Order (DKT. No. 185) (“Proposed CMO”) submitted to this Court by the Plaintiffs’ Steering Committee (“PSC”) on June 18, 2013. The Proposed CMO filed by the PSC was the result of strenuous multi-party negotiations, including a multi-hour personal meet and confer on June 11, 2013 attended by various members of the PSC, the Official Committee of Unsecured Creditors, the Trustee and his counsel, and counsel on behalf of some of the Affiliated Defendants. Despite contentious issues, for the most part, the Proposed CMO resulted in language agreed to by all parties. Even though the Affiliated Defendants requested that the PSC not file the Proposed CMO on June 18, 2013 in an attempt to further negotiate and reach consensus on the one remaining issue, the PSC, for unidentified reasons, felt compelled to file the document on June 18, 2013.

As set forth in the PSC’s Motion for Entry of the CMO, the Affiliated Defendants do not fully support the Proposed CMO as submitted, specifically as to section H, regarding the Trustee’s settlement discussions with the Affiliated Defendants. Though the PSC’s motion states that sections to which the parties did not agree had competing language set out in brackets, the

Proposed CMO did not include the competing language for section H, which is requested by the Affiliated Defendants. For ease of the Court's review, in lieu of submitting a piecemeal suggestion, the entirety of section H, as requested by the Affiliated Defendants is set forth, with the additional language in bold:

The Trustee is currently engaged in settlement discussions with NECC and the Affiliated Defendants, according to the Affiliate Defendant Protocol Order. Plaintiffs' Lead Counsel and the Official Committee shall be kept apprised of the status of that process to the extent permitted by the Affiliate Defendants' Protocol Order.

**Formal discovery is stayed as to the Affiliated Defendants and the other entities and individuals affiliated with NECC while the Affiliated Defendants are engaged in the settlement discussions pursuant to the Affiliate Defendant Protocol Order.**

The Plaintiffs' Steering Committee reserves the right to commence formal discovery against any one or more Affiliated Defendants upon a showing of good cause to the Court, **provided the Affiliated Defendants are given advance notice of the Plaintiffs' Steering Committee's intent to do so and an opportunity to oppose such attempt to show good cause.**

### **CONCLUSION**

With inclusion of the above-bolded language in section H, the Affiliated Defendants support the Proposed CMO and appreciate the opportunity to be part of the process which, for the most part, reached a consensus to allow this MDL to proceed forward in an expeditious and efficient matter.

Dated: June 19, 2013

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**CERTIFICATE OF SERVICE**

I, Frederick H. Fern, hereby certify that on the 19<sup>th</sup> day of June, 2013, the document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Frederick H. Fern  
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